IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 283 OF 1999

The Goa MRF Employees
Union, a Trade Union
registered under the
Trade Unions Act, 1921,
represented by its
President, Shri Rohidas
H. Naik, with its
registered office at
'Saidam', Dhawlimol,
Ponda, Goa. ... Petitioner

versus

1. Shri R. S. Mardolkar,
   Ex-Officio Secretary,
   Department of Industries
   and Labour, Labour
   Commissioner of Goa, with
   his office at Junta House,
   18th June Road, Panaji, Goa.

2. Madras Rubber Factory Ltd.,
   represented by Shri E. M.
   Mathai, General Manager,
   Madras Rubber Factory Ltd.,
   Usgao, Ponda, Goa.

3. State of Goa,
   through the Chief Secretary,
   Panaji, Goa.

4. Chief Inspector of Factories
   and Boilers, Altinho, Panaji,
   Goa.

5. District Magistrate & Collector
   of North Goa, Office of the
   Collector, Panaji, Goa.

6. Director General of Police,
Police Headquarters, Panaji,
Goa.

7. Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi - 110 001, through
The Chief Election Commissioner,
And local office at Goa on
3rd Floor, 2nd Lift, Junta House,
Panaji, Goa. ... Respondents

Mr. Valmiki Menezes, Advocate for the Petitioner.

Mr. A. N. S. Nadkarni, Advocate General with Mr. S. R. Rivonkar, Government Advocate for Respondent Nos.1, 3 to 6.

Mr. G. K. Sardessai, Advocate for Respondent No.2.

Mr. A. N. S. Nadkarni, Advocate General with Mr. H. D. Naik, Additional Government Advocate for Respondent No.7.

CORAM : SMT.NISHITA MHATRE &
P. V. HARDAS, JJ.

DATE : 23RD FEBRUARY, 2004.

**ORAL JUDGMENT**(PER P.V.HARDAS,J.)

This Petition raises an important question in respect of interpretation of the word "day" occurring in Section 135-B of The Representation of the People Act, 1951.

2. It is not necessary for us to advert to the various facts which are stated in the Petition as this

Court is only called upon to interprete the word "day of poll" in Section 135-B of The Representation of the People Act, 1951 as against a Circular issued by the Election Commission of India dated 6th April, 1999.

3. The Election Commission of India by its Circular dated 6th April, 1999, and in particular, in para 4 of the Circular, has stated, which is reproduced thus:-

> "Further, there are industrial undertakings/establishments which are working on shift basis. A doubt has been raised whether paid holiday is to be declared only for the period/shift during which a poll is to be taken and not for other shifts which may commence after the conclusion of the poll. It is clarified that a holiday may be declared only for the shift during which a poll is to be taken. However, it should be ensured that there should be sufficient time gap between the close of poll and commencement of the shift duty".(Emphasis supplied)

By virtue of this Circular, the Election Commission while interpreting the word "day of poll" in Section 135-B has stated that a holiday could be declared only for the shift during which the poll is taken and the other shifts could function as usual if

they commenced after the polling hours. The Commission further directed that there should be sufficient time gap between the close of poll and the commencement of the shift duty.

4. A perusal of Section 135-B of The Representation of the People Act, 1951, makes it abundantly clear that the Legislators intended the "day of poll" to mean full 24 hours.

5. Mr. Valmiki Menezes, learned Counsel appearing on behalf of the Petitioner has relied on Black's Law Dictionary Seventh Edition page 402 for interpretation of the word "day". The learned Author while referring to "calendar day" has held it as a consecutive 24 hours day running from midnight to midnight. Even otherwise, the other Sections of The Representation of the People Act, 1951 carves out exception in respect of polling hours. Section 135-B, by the use of the word "day", clearly indicates that a holiday has to be declared on the day of the poll and the day of the poll would include full 24 hours i.e. from midnight to midnight. This being the position, the contents of para 4 of the Circular issued by the Election Commission of India, dated 6th April, 1999, indicating otherwise is not in accordance with law. The mandate of Section 135-B is clear that every person

entitled to vote an election to the House of the People or the Legislative Assembly shall be granted a holiday on the day of poll. The industrial establishment, business, trade etc. shall remain closed on the day of pole. The Election Commission does not derive any statutory power for issuing the Circular which is impugned in the present Petition. Section 135-B of the Representation of the People Act, 1951, does not carve out any exception in case of industrial undertakings /establishments which are working on shift basis. Therefore, there is no ground at all for the Election Commission to opine that a paid holiday be declared only for the shift during which the poll is to be taken. The only exception which is carved out in Section 135-B is in relation to an elector whose absence may cause danger or substantial loss in respect of the employment in which he is engaged. However, that exception does not fall for our consideration in the present matter. According to us, therefore, the use of the words "day of poll" would, therefore, mean full 24 hours and the industrial undertakings/establishments which are working on shift basis cannot declare a holiday only for the shift during which the poll is held.

6. Mr. A. N. S. Nadkarni, learned Advocate General appearing on behalf of Election Commission of India has filed an Affidavit in this Court in which it

is stated that the said Circular is not a Notification issued under any statutory power nor is it meant to dilute the consequences of the provision of Section 135-B of The Representation of the People Act, 1951. The Affidavit further states that in the event of any conflict, the provision of Section 135-B will prevail.

7. According to us, the contents of para 4 of the Circular issued by the Election Commission of India dated 6th April, 1999, is de hors Section 135-B of The Representation of the People Act, 1951. In that view of the matter, we strike down para 4 of the said Circular and make Rule absolute in terms of prayer clause (bb) of the Petition by holding that para 4 of the Circular, being contrary to Section 135-B of The Representation of the People Act, 1951 is quashed and set aside. In respect of the relief claimed in prayer clause (bbb), we leave it to the Authorities to take appropriate action as is deemed necessary by them.

8. Rule made absolute accordingly with no order as to costs.

SMT.NISHITA MHATRE,J.

P. V. HARDAS,J.